

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DAWN B. MANTANI,

Plaintiff,

vs.

PORTFOLIO RECOVERY ASSOCIATES, LLC,
GUGLIELMO & ASSOCIATES PLLC, and
PAUL D. GUGLIELMO,

Defendants.

NOTICE OF REMOVAL

Defendants Guglielmo & Associates PLLC and Paul D. Guglielmo (the “Guglielmo Defendants”) file this Notice of Removal removing this action to the United States District Court for the District of New Mexico. As grounds for the removal, the Guglielmo Defendants state as follows:

I. BACKGROUND AND PROCEDURAL PREREQUISITES FOR REMOVAL

Plaintiff filed her “First Amended Complaint for Violation of the United States Fair Debt Collection Practices Act, for Violation of the New Mexico UPA, and for Certification as Class Action” (“Complaint”) on May 21, 2012 (the “State Court Action”). Plaintiff’s Complaint is styled *Dawn B. Mantani v. Portfolio Recovery Associates, LLC, Guglielmo & Associates, PLLC and Paul D. Guglielmo*, No. D-1239-CV-2012-009971 in the Thirteenth Judicial District Court, County of Sandoval, New Mexico. The Guglielmo Defendants were served with the Complaint and Summons on May 29, 2012. True and correct copies of all processes, pleadings, and orders served upon the Guglielmo Defendants are attached hereto as Exhibit “A.” The Guglielmo Defendants have received no other process, pleadings, motions or orders.

The Court's jurisdiction must be assessed by examining the complaint filed in the State Court Action on its face as of the time of filing this Notice of Removal. *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 390 (1998) (“[F]or purposes of removal jurisdiction, we are to look at the case as of the time it was filed in state court”) (citing *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938) (“[T]he status of the case disclosed by the plaintiff's complaint is controlling in the case of removal.”)); *Pfeiffer v. Hartford Fire Ins. Co.*, 929 F.2d 1484, 1488 (10th Cir. 1991) (“[T]he propriety of removal is judged on the complaint as it stands at the time of removal.”).

In her Complaint, Plaintiff alleges that the Guglielmo Defendants have violated a federal statute, specifically, the Federal Debt Collection Practices Act, 15 U.S.C. § 1692. *See* Ex. A, Complaint at Count I. Plaintiff has also asserted claims for violation of the New Mexico Unfair Trade Practices Act, NMSA 1978, § 57-12-1 *et seq.* (Count II), for malicious abuse of process (Count III), for certification as a class action (Count IV), and for punitive damages (Count IV [sic]). These state law claims are all based on the same operative facts as those alleged in connection with her federal statutory claim.

II. THIS COURT HAS FEDERAL QUESTION JURISDICTION

This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 based on federal question jurisdiction. Plaintiff alleges that the Guglielmo Defendants violated the Federal Debt Collection Practices Act, 15 U.S.C. 1692. *See* Complaint ¶¶ 9, 11, 12-18 (Count I). As Plaintiff's lawsuit arises under federal law, this Court has original jurisdiction over such claims. Plaintiff's state law claims are based on the same operative acts, granting this Court supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

III. PROPRIETY OF REMOVAL

The Notice of Removal is filed within thirty (30) days after receipt by the Guglielmo Defendants through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action is based, as required by 28 U.S.C. § 1446(b). All of the named defendants consent to the removal of this action to this Court. Defendant Portfolio Recovery Associates, LLC will timely file a notice of consent to removal pursuant to 28 U.S.C. § 1446(b)(2)(A).

The United States District Court for the District of New Mexico is the federal judicial district embracing the Thirteenth Judicial District Court, County of Sandoval, New Mexico, where this suit was originally filed. Venue is thus proper in this Court pursuant to 28 U.S.C. § 1391 and removal to this District is proper under 28 U.S.C. § 1441(a). This lawsuit accordingly may be brought before the United States District Court for the District of New Mexico pursuant to 28 U.S.C. §§ 1331 and 1441(a).

The Guglielmo Defendants will promptly (a) file a true and correct copy of this Notice with the Clerk of the Thirteenth Judicial District Court, County of Bernalillo, New Mexico, in accordance with 28 U.S.C. § 1446(d), and (b) serve Plaintiff's counsel with a true and correct copy of this Notice of Removal, in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, the Guglielmo Defendants respectfully remove this matter from the Thirteenth Judicial District Court to this Court for determination of all issues.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/Leslie McCarthy Apodaca -Electronically Filed 6/28/12

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*Attorneys for Defendants Guglielmo & Associates PLLC
and Paul D. Guglielmo*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2012, I filed the foregoing electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

John M. Wells - johnmwells@qwestoffice.net
Attorney for Plaintiff Dawn B. Mantani

/s/ Leslie McCarthy Apodaca
Leslie McCarthy Apodaca